UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,051	06/29/2005	Philip Steven Newton	NL 021482	4083

24737   7590   06/30/2010
PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER
NEWLIN, TIMOTHY R

ART UNIT	PAPER NUMBER
2424	

MAIL DATE	DELIVERY MODE
06/30/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action _Before the Filing of an Appeal Brief_	10/541,051	NEWTON ET AL.
	Examiner	**Art Unit**	
	Timothy R. Newlin	2424	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>10 June 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☒ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

  /Christopher Kelley/
  Supervisory Patent Examiner, Art Unit 2424

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that OPENTV does not teach the related storage related information categorizing modules as optional for recording. Examiner disagrees; the beginning and ending times, transmitted with each carousel, serve to categorize program modules as unavailable or unavailable for recording, and thus read on storage related information. OPENTV, p. 8, ll. 5-7. Reciting "categoriz[ing]" in place of "categories indicating whether..." does not change the scope of the claim because the two phrases are equivalent. Moreover, OPENTV teaches an "optional" category as discussed in the Office action mailed 10/5/2009:

"With respect to the "optional for recording" status, Examiner notes that "optional" is an extremely broad term that does not imply and specific decision tree or protocol for choosing among optional data modules; it merely implies that a data module is not required to be saved nor is it prohibited from being saved. In that sense it is a negative limitation, covering data modules that are anything but required or prohibited. Accordingly, OPENTV, which allows a user to choose certain modules at will (e.g. "if a user wishes to record", "user initiates recording") meets the limitation. [p. 6, l. 38; p. 8, ll. 26-27]."

Thus, OPENTV is only relied upon to teach optional modules in the general sense; Goodman is relied upon to teach the specific characteristics of the optional modules, i.e. offering extra features (limitation "b" is not addressed since it is alternative only). Applicant's argument that extra code does not read on "extra features" is not persuasive. In the computing art, extra features would be interpreted to include extra application code as recited in Goodman, which refers to "additional code," i.e. code that goes beyond what was initially downloaded. With regard to whether Goodman's additional code is optional, that would not be determinative since optional modules are taught by OPENTV. In any event, in view of OPENTV, which does explicitly teach optional modules, one of ordinary skill would recognize that Goodman's additional code might be categorized as optional since it is in addition to--i.e. not fundamental to-existing stored code.

To summarize, OPENTV teaches sending storage related information and optional modules generally, and Goodman is cited to meet the specific type of optional module. The proposed amendment does not effectively narrow the claim and thus the rejections stand.

With respect to the proposed amendment to claim 9, the added flagging language appears to be met by at least Goodman, e.g. col. 6, 9-33 and 45-67, col. 7, 27-34.